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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THOMAS P. KELLY, JR., Plaintiff and Respondent, v. CHRISTINA REUSER, Defendant and Appellant.	A133908 (Sonoma County Super. Ct. No. SCV-250363)

I.

INTRODUCTION

Appellant Christina Reuser (Reuser), in pro. per., appeals from the entry of a civil harassment injunction issued pursuant to Code of Civil Procedure section 527.6,[1] ordering her to stay away from and limiting her conduct with respondents Thomas P. Kelly, Jr. (Kelly), his son, Thomas P. Kelly, III (Kelly III), and Kelly's legal secretary, Julie Humphreys (Humphreys) (collectively, protected persons). As near as we can discern from her briefs, she contends on appeal that: (1) we should reevaluate the credibility of Kelly and his witnesses, and hold them criminally liable for perjury, and (2) the evidence was insufficient to support the issuance of the injunction on several grounds, each of which we address below.

We conclude that appellant's contentions lack merit, and therefore, we affirm.

[1] Unless otherwise indicated, all statutory references are to the Code of Civil Procedure.

II.

PROCEDURAL AND FACTUAL BACKGROUND[2]

In November 2010, Reuser attended her brother's trial against Kelly's client, Eric Dahl (Dahl), regarding unpaid compensation in a construction matter. At that trial Kelly subpoenaed Reuser as a witness. During the trial, Reuser followed Kelly to his car at least once, and attempted to speak with him. Kelly determined Reuser had nothing meaningful to say and ignored her.

Kelly next encountered Reuser at a local bakery he occasionally frequented. Reuser was waiting for him inside and had "a great deal to say." But, Kelly again paid no attention to what was said, made his purchase, and left.

On April 14, 2011, Reuser sent an e-mail to Humphreys, Kelly, and Dahl requesting payment of witness fees in the amount of $616.53 by April 30, 2011, for being available to testify in the construction lawsuit.[3] The e-mail also accused Kelly of being a liar and a sleazy lawyer. Less than two weeks later, Reuser sent another e-mail threatening to send the sheriff to serve Dahl with process at his home. Reuser explained that she hoped the sheriff would catch Dahl doing something illegal, because she believed

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[2] In defending the judgment, Kelly relies on *Estate of Palmer* (1956) 145 Cal.App.2d 428, 431, arguing in essence that Reuser failed to adhere to California Rules of Court, rule 8.204(a)(1)(C) (requiring the brief properly cite any reference to a matter in the record) and (a)(2)(C) (requiring the brief provide a summary of the significant facts limited to matters in the record), and that the court should thus disregard Reuser's claim that there is no substantial evidence to support the injunction. There, as here, the defendant argued there was no substantial evidence to support the judgment below, however, that court found the defendant made "no attempt" to fairly state the evidence and dismissed the claim. We find the briefs at issue here more similar to those in *Arbaugh v. Procter & Gamble Mfg. Co.* (1978) 80 Cal.App.3d 500 (*Arbaugh*). In *Arbaugh*, the defendant's opening brief, despite its shortcomings, made some reference to the record below, and, in view of the plaintiff's thorough summary of facts, the court considered the case on its merits. (*Id.* at p. 503, fn. 1.) Reuser's briefs, albeit not models of appellate practice, do summarize the facts and contain some citations to the record. Therefore, her briefs contained sufficient information for us to consider the issues presented.

[3] Reuser eventually secured a favorable judgment on the witness fees issue, and the remaining balance due on that judgment was paid at the section 527.6 hearing.

he engaged in illegal activity at his house. When Reuser did not receive her requested payment, she sued Kelly in small claims court. Believing Kelly denied receiving service of process by mail in the past, Reuser had a friend personally serve Kelly at his law office while she videotaped the service. Reuser returned to the office later that spring and attempted to serve Kelly and his firm with process for another small claims case involving her brother. After hearing from Humphreys and Kelly III that Kelly was not there, and being asked to leave, Reuser left.

Tensions continued through June and July when Reuser sent e-mails to Kelly, Kelly III, Humphreys, Dahl, Dahl's fiancé, and an expert hired by Kelly's firm. The e-mails requested payment of witness fees, attached a revised demand letter. They also: (1) accused Kelly of using "underhanded tricks" and of making a "living screwing people and abusing the system;" (2) referred to Kelly, Dahl and his fiancé as "insidious partners in crime;"(3) said that Reuser's brother "walked into [Kelly's] arena and bitch[-]slapped [him] time and time again . . . ;" and (4) called Kelly "a dirty rotten liar and horrible person."

Reuser visited the office for a third time between July and August seeking to serve Kelly with process in her brother's small claims action. Kelly III told her Kelly was not present, and asked her to leave. She left without incident, but Kelly III reported this and the other visits to Kelly, Humphreys, and Wayne Cook (Cook), the assistant building manager and the person in charge of security of Kelly's office building. He told them Reuser was being disruptive, that they should "keep an eye out," and that they "might have a problem with this."

On August 14, 2011, Reuser sent another e-mail to Kelly, Kelly III, Humphreys, Dahl, Dahl's fiancé, and the expert. This one called Kelly a "bitch," a "punk," and a "pussy" and asked him, "[a]re you mildly retarded?" Four days later, Reuser went to the office to serve Kelly with process in a small claims suit concerning her brother. At the time, Kelly was discussing a bankruptcy matter in an exploratory meeting with clients. Reuser opened the conference room door and threw papers over a client's head saying or shouting, "[y]ou're served." Kelly III escorted her out of the office. While being

escorted, Kelly III knocked Reuser's phone to the ground.[4] Cook, hearing an "aggressive tone," came down the hallway and met Reuser and Kelly III. Cook led Reuser down the elevator where she waited for, then met with, officers from the Santa Rosa Police Department.

Three weeks after that incident Reuser sent an e-mail to the protected persons and others warning Kelly, "[t]his is all on you. And after [my brother] beats you again and the time comes when he drags [your client's fiancé], [your wife] and [your expert's wife] into this matter, it will also be on you." The e-mail concluded by stating, "I expect I will began [*sic*] calling and visiting next week. See you then. Love Christina."

On September 19, 2011, respondent petitioned the court for an injunction restraining appellant under section 527.6. The petition was supported by declarations from Kelly, Kelly III, Humphreys, and Cook. On September 24, 2011, Reuser sent another e-mail to the protected persons telling them she would try contacting Kelly by "calling, e-mailing, or stopping by." Two days before the civil harassment hearing, Reuser sent Kelly's attorney an e-mail accusing him of attempting to harm her because she "stood up to [his] punk-ass bully of a client and then beat him at his own game." At the civil harassment hearing appellant defended herself by arguing that the harsh language in the e-mails had been taken out of context, and that her visits to the office served the legitimate purpose of handling legal business. At the conclusion of the hearing, the court issued a three-year injunction pursuant to section 527.6 prohibiting Reuser from harassing, contacting, or taking any action to obtain the addresses or locations of Humphreys, Kelly and Kelly III directly or indirectly (Judicial Council Form CH-140). The injunction also prohibited Reuser from possessing a firearm and required her to stay 100 yards away from the protected persons, their homes, workplaces, and vehicles.

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[4] There is some discrepancy in the facts on this point. Kelly III claims Reuser pulled the phone out of her purse and pointed at his face, and that he knocked it away believing it was mace or a Taser. Reuser claims Kelly III "got violent with [her]," "snatched" the phone from her hand and threw it against the wall.

III.

DISCUSSION

A. Perjury

Reuser first requests that we examine the instances she identifies as perjury by Kelly, Kelly III, Humphreys, and Cook and "deem their entire testimony lacks credibility" and violates Penal Code section 118.[5]

The crime of perjury requires a "willful statement, under oath, of any material matter which the witness knows to be false. [Citation.]" (*People v. Howard* (1993) 17 Cal.App.4th 999, 1004.) "The test is whether the statement could probably have influenced the outcome of the proceedings . . . ." (*People v. Pierce* (1967) 66 Cal.2d 53, 61; accord, *People v. Rubio* (2004) 121 Cal.App.4th 927, 933.) " 'The question of whether the false swearing is the result of an honest mistake or has been committed willfully, knowingly and corruptly is one of fact for the [trier-of-fact] to decide [citation], and evidently the [trier-of-fact] in the present case, as shown by its verdict, did not believe the story told by [the defendant]. Therefore, since the [trier-of-fact] is the sole judge of the credibility of the witnesses and the facts of the case, it is beyond the power of the reviewing court to interfere with the conclusions it has reached on this issue.'

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[5] The statute in full provides: "(a) Every person who, having taken an oath that he or she will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which the oath may by law of the State of California be administered, willfully and contrary to the oath, states as true any material matter which he or she knows to be false, and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury.

"This subdivision is applicable whether the statement, or the testimony, declaration, deposition, or certification is made or subscribed within or without the State of California.

"(b) No person shall be convicted of perjury where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant. Proof of falsity may be established by direct or indirect evidence." (Pen. Code, § 118.)

Citations.]" (*People v. Todd* (1935) 9 Cal.App.2d 237, 244; accord, *People v. McRae* (1967) 256 Cal.App.2d 95, 113.)

Many of the statements Reuser alleges to be perjurious are merely discrepancies in the descriptions of facts and attacks on the credibility of the witnesses. Appellate courts are powerless to determine the credibility of the witnesses. (See *Camarena v. State Personnel Bd.* (1997) 54 Cal.App.4th 698, 703 ["we do not assess credibility or reweigh the evidence]; *Bancroft-Whitney Co. v. McHugh* (1913) 166 Cal. 140, 142; see also 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 365, pp. 421-422 ["[t]his fundamental doctrine is stated and applied in hundreds of cases"].) In this case, the trial judge heard all of the proffered evidence, and concluded that there was sufficient evidence to support the issuance of the injunction. In doing so, the court expressly found the testimony of the protected persons to be credible. Having made that finding, it is beyond our purview to second guess the judge's assessment of that testimony.

B. Substantial Evidence Supports the Trial Court's Ruling

Appellant next contends the trial court's order is not supported by substantial evidence. In reviewing a section 527.6 restraining order, "[t]he appropriate test on appeal is whether the findings (express and implied) that support the trial court's entry of the restraining order are justified by substantial evidence in the record. [Citation.]" (*R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 188, fn. omitted.)

Both parties agree, correctly, that "[i]n assessing whether substantial evidence supports the requisite elements of willful harassment, as defined in . . . section 527.6, we review the evidence before the trial court in accordance with the customary rules of appellate review. We resolve all factual conflicts and questions of credibility in favor of the prevailing party and indulge in all legitimate and reasonable inferences to uphold the finding of the trial court if it is supported by substantial evidence which is reasonable, credible and of solid value. [Citations.]" (*Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762.) "But whether the facts, when construed most favorably in [the prevailing party's] favor, are legally sufficient to constitute civil harassment under section 527.6 . . . [is a]

question[] of law subject to de novo review. [Citations.]" (*R.D. v. P.M., supra,* 202 Cal.App.4th at p. 188.)

Section 527.6 allows a court to issue an injunction prohibiting "harassment." Under the statute, "harassment" means either (1) "unlawful violence;" (2) "a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family;" or (3) "a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person[,] that serves no legitimate purpose," that "would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner." (§ 527.6, subd. (b)(2), (b)(3).)

". . . If the judge finds by clear and convincing evidence that unlawful harassment exists, an injunction shall issue prohibiting the harassment." (§ 527.6, subd. (i).) "The trial court's decision to grant a permanent injunction rests within its sound discretion and will not be disturbed on appeal absent a showing of a clear abuse of discretion. [Citation.]" (*Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 912.)

Section 527.6 does not require courts to state their findings of fact. (*Ensworth v. Mullvain* (1990) 224 Cal.App.3d 1105, 1112.) "[T]he granting of the injunction itself necessarily implies that the trial court found that [the defendant's] conduct" satisfied the elements of the statute. (*Id.* at p. 1112.) "Inferences may be drawn not only from the evidence but from the demeanor of witnesses and their manner of testifying. [Citations.]" (*Id.* at p. 1110.) Sufficient evidence of harassment against a protected person can "allow the trial court to draw the conclusion that [a protected person] indeed had suffered substantial emotional distress." (*Id.* at pp 1110-1111.)

Reuser contends there is no evidence that her actions made the Kellys or Humphreys fear for their safety. We disagree. Kelly presented evidence that Reuser engaged in a course of conduct that made the protected persons fearful for their safety or the safety of their families. Reuser sent hostile e-mails to Humphreys's personal e-mail. Humphreys noticed that these e-mails threatened anyone who took Kelly's side. The 22-year-old secretary gave oral testimony describing Reuser or her e-mails as "threatening"

many times. She expressed that she was "very concerned" about Reuser "threatening . . . Kelly . . . or [Kelly III] or even [her]self." Humphreys even told Kelly she was physically afraid of Reuser.

Sufficient evidence was presented to show that a reasonable person in Kelly's position would fear for his safety or the safety of his wife. Kelly, having acquired at least 51 years of legal experience, is not a young man. Regardless, he became the primary target of menacing correspondence sent by 34-year-old Reuser and her brother. Reuser's aggressive contact began in November 2010 and her scathing unilateral e-mails were sent over a period of at least five months. The e-mails threatened Kelly, his client, the fiancé of his client, his expert witness, his expert witness's wife, and his wife, who is "advanced in years" and has had multiple hip operations. The e-mails threatened unwanted personal visits to his office. Those threats were realized. Reuser also threatened to come to his home.

Kelly III's awareness of this threatening conduct targeting his father and constant reminders of Reuser's aggressive disposition support a finding that he feared for the safety of his mother or father, as well. Furthermore, Kelly III was "highly concerned" that Reuser researched and threatened his mother.

Additionally, the trial court took note of Humphreys's threatened demeanor during the hearing. The trial court also commented on Reuser's comportment, noting that her tone was "certainly of concern," that Reuser "made everybody a little bit uncomfortable" and explaining that her intensity and tone allowed "the [trial court] to see how [Reuser] would have appeared to Ms. Humphreys and to the Kellys and the clients in the law office." Reuser even acknowledged her aggressive courtroom behavior during her closing argument. This behavior emphasized what the aforementioned evidence already established, that Reuser engaged in a "course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family . . . ." (§ 527.6, subd. (b)(2).)

Although the evidence of a "credible threat of violence" is sufficient to support the injunction, for the sake of argument, we also address Reuser's related claim that her

actions did not constitute a course of conduct or a "pattern evidencing a continuity of purpose," under section 527.6. The trial court made an express finding that Reuser engaged in a pattern of annoying, irritating, and threatening conduct targeting the protected persons. The finding was based on substantial evidence, including the testimony of six witnesses who discussed a series of harassing e-mails and encounters. The e-mails may have primarily targeted Kelly, but they were also sent to Humphreys's personal e-mail, Kelly III, a client of the Kelly's firm and his fiancé, and an expert used by the firm. The record contains evidence that Reuser accosted Kelly numerous times in several venues, including his office, a bakery he frequented, and the local court parking lot, that she shouted at Humphreys, and confronted Kelly III at his office on at least three occasions. Reuser's last attempt at service quickly became a debacle compromising client confidentiality and culminating in a battery allegation and a police visit. Kelly testified that Reuser's conduct upsets him and detracts from his work. He described her conduct as "[v]ery disruptive and very embarrassing." Humphreys's declaration stated, "Reuser has deliberately engaged in conduct disruptive to the office." Humphreys detailed that Reuser's actions prevented her from working on a dictation or sending out mail; that she could not answer the phone at her desk while Reuser was there; that she was concerned Reuser would interrupt or involve clients; that the e-mails were "taunting," "upsetting," "threatening," "very harsh," "very aggressive," and made her "fe[el] very uncomfortable." Kelly III testified Reuser's actions annoyed him, disrupted the office, and were "highly concerning to [him]." Furthermore, Cook became concerned that Reuser would disrupt the other tenants in the building.

Reuser asserts that each e-mail was sent for a legitimate purpose. Collecting on a judgment and reasonably providing parties notice regarding pending litigation are legal rights of Reuser. However, she may not pursue those rights in a manner that violates the rights of others. There was no legitimate purpose for the insults, continued threats of contact, and consistently hostile nature of Reuser, especially considering that she knew of peaceful methods to conduct her legal business.

Reuser next contends there was no substantial evidence supporting the necessary conclusion that a reasonable person would have suffered substantial emotional distress as a result of her actions. To the contrary, the record reflects Reuser engaged in unwanted contacts with Kelly for nearly one year. She sent vulgar, unwanted e-mails to the protected persons for a period of over five months. The e-mails threatened Kelly, those working for him, including his legal counsel, and made several disruptive visits to his office, one of which undermined the confidentiality of a sensitive client meeting. As noted, the trial judge mentioned Reuser's courtroom demeanor allowed the court to see how she would have appeared to the protected persons when she visited the office. The evidence of these and other harassing acts gave the trial court a satisfactory basis to conclude a reasonable person would have suffered substantial emotion distress. (See *R.D. v. P.M.*, *supra*, 202 Cal.App.4th at p. 189.)

Reuser next claims Kelly did not provide any evidence showing Kelly or Kelly III actually suffered substantial emotional distress. This assertion is also meritless. In *Ensworth v. Mullvain*, *supra*, 224 Cal.App.3d at pages 1110-1111, evidence of a former psychologist's patient's following, calling, and sending threatening letters to her former psychologist were sufficient, without direct oral testimony, to establish that the psychologist actually suffered emotional distress. The record here also contains sufficient evidence of Reuser's harassment of Kelly and Kelly III to support the trial court's finding that they actually suffered substantial emotional distress. Testimony from multiple witnesses detailed Reuser's repeated unwanted visits and threatening e-mails. Furthermore, Kelly III testified he was "deeply concerned" for Humphreys and "highly concerned" his mother was implicated in the dispute. Kelly also commented on his concern for Humphreys, testified that Reuser's statements were "very upsetting" and that Reuser's actions "upset [him] . . . [and] detract[ed] [him] from [his work]." He informed the court that Reuser threatened to visit his house. Accordingly, the record contains sufficient evidence that Reuser actually caused Kelly and Kelly III substantial emotional distress. Any further direct testimony would have been cumulative. (See *id.* at p. 1111.)

Reuser lastly argues that under section 527.6, there must be a showing of a threat of *continued* harassing conduct warranting the injunction against potential future misconduct. (See *Scripps Health v. Marin* (1999) 72 Cal.App.4th 324, 333.) Reuser's claim that the trial court made no finding of the likelihood of future harm is simply wrong. While a trial court was not required to make an explicit finding of continuing risk of harassing misconduct (see *Ensworth v. Mullvain, supra,* 224 Cal.App.3d at p. 1112), the trial court below plainly stated there was such a risk of future harm. When pronouncing its ruling on the motion, the trial court referenced a pattern of harassing conduct, including Reuser's obvious emotional involvement, intensity and tone at the hearing, and then explicitly decided based on the evidence presented that there is a clear danger "that some other confrontation will happen at the bakery or in the law offices or somewhere, and it's just not acceptable behavior." The trial court emphasized "there's a clear danger that [civil harassment] would happen again based upon the emotions involved and the continuing litigation issues."

Accordingly, the trial court sufficiently contemplated the risk of future harassment and made a sound judgment.

As shown above, the elements of section 527.6, subdivisions (b)(1) and (2), were supported by reasonable and credible evidence of solid value. Although Reuser quarrels with the testimony of Kelly and his witnesses and denies her conduct constituted harassment, the trial court examined substantial evidence and resolved conflicts in evidence in Kelly's favor. "If . . . 'substantial' evidence is present, no matter how slight it may appear in comparison with the contradictory evidence, the judgment will be affirmed." (9 Witkin, Cal. Procedure, *supra,* Appeal, § 370, p. 427.) Having found substantial evidence supporting the trial court's order, we therefore affirm it.

IV.

DISPOSITION

The order granting the injunction restraining Reuser is affirmed.

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RUVOLO, P. J.

We concur:

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REARDON, J.

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SEPULVEDA, J.*

* Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.